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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160615524-6524-01]

RIN 0648-BG13

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Scup Fishery; Framework Adjustment 9

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes modifications to the Southern Scup Gear Restricted Area, as recommended by the Mid-Atlantic Fishery Management Council. The proposed changes would modify the southern and eastern boundaries of the Southern Scup Gear Restricted Area, which is in effect from January 1 through March 15 of each year. This rule is intended to increase access to traditional squid fishing areas, while maintaining protection for juvenile scup.

DATES: Comments must be received by *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2016-0102, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal.

1. Go to www.regulations.gov/#!/docketDetail;D=NOAA-NMFS-2016-0102;
 2. Click the “Comment Now!” icon and complete the required fields; and
 3. Enter or attach your comments.
- *Mail:* Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on the Scup GRA Framework.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by us. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the Scup Gear Restricted Area Modification Framework, including the draft Environmental Assessment, the Regulatory Impact Review, and the Regulatory Flexibility Act Analysis prepared by the Mid-Atlantic Fishery Management Council in support of this action are available from Dr. Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. The supporting documents are also accessible via the Internet at: <http://www.mafmc.org/actions/scup-gear-restricted-areas-framework> or <http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/scup/index.html>.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Program Specialist, phone: 978-281-9218; e-mail: Moira.Kelly@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Scup (*Stenotomus chrysops*) is managed jointly by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission through the Summer Flounder, Scup, Black Sea Bass Fishery Management Plan (FMP). The management unit specified in the FMP for scup is U.S. waters of the Atlantic Ocean from 35°13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Currently, the scup stock is not overfished and it is not experiencing overfishing.

When scup was overfished prior to 2009, the Council and NMFS determined that juvenile scup mortality in small-mesh fisheries (i.e., those fisheries using mesh smaller than the minimum size specified in the scup regulations) was highly problematic. Two seasonal Gear Restricted Areas (GRAs) were implemented to prohibit vessels fishing for squid, black sea bass, or silver hake (also known as whiting) from using mesh smaller than the 5.0-inch (12.7-cm) minimum scup mesh size in the areas during certain times of year. The GRAs were implemented in 2000 (May 24, 2000, 65 FR 33486) and modified several times (December 27, 2000, 65 FR 81761; March 1, 2001, 66 FR 12902; January 2, 2003, 68 FR 60; January 4, 2005, 70 FR 303) between 2000 and 2005. Details on the changes to the GRAs are described in those actions and are not repeated here. Most often the changes were enacted to accommodate access for one of the regulated small-mesh fisheries, while still maintaining an effective level of protection for juvenile scup. The GRAs in their current forms have been in effect since 2003 (Northern GRA) and 2005 (Southern GRA). Scup has been considered rebuilt since 2009, and is currently estimated to be approximately 210

percent of the biomass target, although it has begun to decline in recent years. Research by the Northeast Fisheries Science Center suggests that minimizing juvenile mortality in the GRAs likely contributed to the recovery and expansion of the scup population.

Like the prior modifications, the Council began considering modifying the GRAs in early 2014 in response to requests from the squid fishery to increase access to historic fishing grounds during the seasons in which the GRAs are in effect. Because of the spatial overlap of several of the alternatives in the Council's Deep-Sea Coral Amendment (<http://www.mafmc.org/actions/msb-am16>), the Council postponed development of the Scup GRA framework until action on the Coral Amendment had been completed. The Council took final action on the Deep-Sea Coral Amendment in June 2015, and the action is currently under review at NMFS.

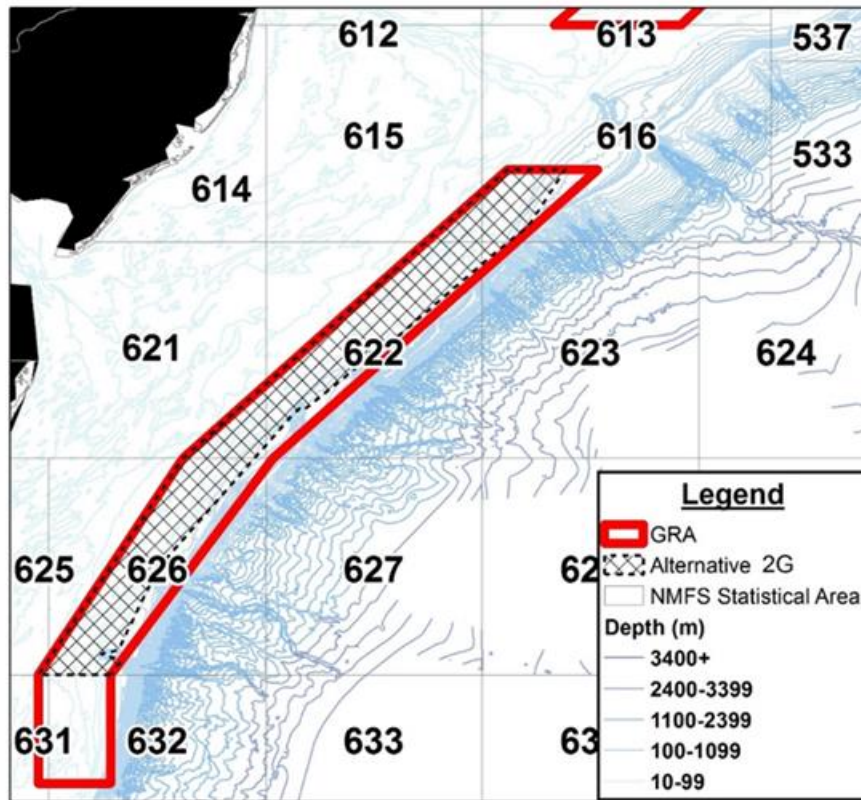
The Council initially considered modifications to the boundaries and seasons of both GRAs, but ultimately determined that the only changes warranted at this time were to the southern and eastern boundaries of the Southern GRA. The Council considered several variations of the Southern GRA boundary and determined that the proposed measure best balanced the needs of the squid fishery and the protective value of the Southern GRA for juvenile scup from January 1-March 15.

Proposed Modifications

The proposed change to the Southern GRA would shift the eastern boundary west roughly following the outermost points of the proposed Deep-Sea Coral Protection Areas. The proposal would also remove the southern portions of the GRA that overlap statistical areas 631 and 632. The current (thick outline) and proposed (hatched) Southern GRA are

shown in the figure below. The proposed Southern GRA coordinates are provided in the proposed regulatory text.

Figure 1. Current and Proposed Southern Gear Restricted Areas



The Council designed the recommended modifications to minimize overlap between the GRA and the recommended discrete deep-sea coral areas. The eastern boundary is intended to restore access to the squid fishery in areas approximately 55 to 60 fathoms (100 to 110 m) and deeper. The shift to the southern boundary north is based on analysis suggesting there are very few scup in statistical areas 631 and 632 from January through March. The Council's proposal would marginally reduce the amount of protection for the scup stock, in return for a modest increase in squid availability. The proposed Southern GRA is smaller than the current one; slightly reducing coverage of the scup estimated to be covered by the GRA. However, analysis shows that this change would result in a modest increase in access for the squid and whiting fisheries and a slight increase in the availability of black sea bass in the GRA from January 1-March 15. It is important to note, however, that the amount of each stock (by weight) currently estimated to be within the GRA during the winter is only a small fraction of the total stock abundance during that same timeframe. As a result, we do not expect the proposed boundary changes to compromise the scup stock or result in overfishing for squid, black sea bass, or whiting.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with an Environmental Assessment. There were 64 federally permitted squid, whiting, and black sea bass vessels fishing with small-mesh from January 1-March 15 in the statistical areas covered by the GRA for the past three years. These are the vessels likely to be affected by this action. For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR § 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. Of those 64 vessels, 61 are considered “small” by the NMFS size standards, and three are considered “large.” The proposed measure would modify the boundaries of the Southern Scup GRA and is intended to increase access to the squid, whiting, and black sea bass fisheries. The boundary changes were designed to maintain a high level of discard mortality protection for the scup fishery, while increasing opportunity, and therefore revenue, for the small-mesh fishery targeting squid, whiting, and black sea bass. The changes are not expected to result in excessive increases in mortality for any species. As a result, economic impact of this action is expected to be slightly positive for all of the affected vessels in those fisheries.

Because this rule will not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 12, 2016

Paul Doremus,
Deputy Assistant Administrator for Operations,
National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.124, revise paragraph (a)(1) to read as follows:

§ 648.124 Scup commercial season and commercial fishery area restrictions.

(a) *Southern Gear Restricted Area*—(1) *Restrictions*. From January 1 through March 15, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section must fish with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	N. lat.	W. long.
SGA1	39.333333	-72.616667
SGA2	39.073019	-72.786958
SGA3	38.496545	-73.467370
SGA4	38.477560	-73.489477
SGA5	38.495300	-73.510888
SGA6	38.438654	-73.557363
SGA7	38.219230	-73.829500
SGA8	38.229019	-73.845524
SGA9	38.199688	-73.877487
SGA10	37.492224	-74.499182
SGA11	37.490513	-74.504757
SGA12	37.476656	-74.510019
SGA13	37.116111	-74.680000
SGA14	37.097222	-74.759444
SGA15	37.073889	-74.683889
SGA16	37.057931	-74.672732
SGA17	37.000000	-74.716667
SGA18	37.000000	-75.050000
SGA19	38.000000	-74.383333
SGA20	39.333333	-72.883333
SGA1	39.333333	-72.616667

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